CLEARY GOTTLIEB

ALERT MEMORANDUM

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Changes to the UKLA Listing Rules – New Rules on Enhancing the Effectiveness of the Listing Regime

I. INTRODUCTION

Our alert dated November 19, 2013 set out Listing Rule changes proposed by the UK Financial Conduct Authority (the "FCA") to "enhance" the London listing regime. The final rules implementing those changes have now come into effect. A summary of the key amendments to the Listing Rules now in force, and of the key developments in the FCA's approach as a result of the last consultation, are set out below.

II. SUMMARY OF THE KEY AMENDMENTS TO THE LISTING RULES

The changes applicable to premium-listed companies with a 30% shareholder include:

- a requirement to enter into a relationship agreement with the controlling shareholder (including any of its concert parties) aimed at ensuring the independence of the listed company from that shareholder. Existing premium-listed companies with a controlling shareholder must put in place a new relationship agreement or amend existing agreements to cover the prescribed independence provisions by November 17, 2014. If a premium-listed company "acquires" a controlling shareholder, it will have six months to enter into a relationship agreement with the prescribed independence provisions;
- a requirement for the board of directors to make an annual declaration of compliance with the independence provisions in the relationship agreement by the company and, so far as the company is aware, by the controlling shareholder or any of its associates;
- enhanced oversight measures requiring that all transactions with the relevant controlling shareholder be subject to shareholder approval if the relationship agreement has been breached, or if an independent director believes it has been breached;
- an eligibility requirement, applicable also on an ongoing basis, that the company be able to carry on an independent business as its main activity, and in particular, independently of any controlling shareholder;
- a dual voting structure for the election of independent directors - a first vote by the shareholders as a whole and a separate second vote by the independent shareholders. If these votes conflict, the company may propose a further single vote on a simple majority basis (allowing the controlling shareholder to vote) within 120 days after the original vote. Existing premium-listed companies with a controlling shareholder (and premium-listed companies that "acquire" a controlling shareholder) have until the date of their next annual general meeting ("AGM") to amend their constitution to provide for the dual voting structure unless the company has already given notice of the AGM or gives notice of the AGM within the following three months, in which case they have until the subsequent AGM;
- a requirement to disclose any existing or historic relationships, transactions or arrangements between an independent director candidate and the company, its directors, any controlling shareholder or any associate of a controlling shareholder; and
- a requirement for the cancellation of a premium listing to be sanctioned by the majority of independent shareholders.

The changes applicable to all premium-listed companies include:

- an eligibility requirement, applicable on an ongoing basis, that the company be able to carry on an independent business as its main activity;
- new guidance on when the FCA will consider reducing the 25% free float eligibility requirement and also when the prevailing free float would be such that the FCA would revoke such a concession;

- a new rule pursuant to which shares subject to a lock-up period of longer than 180 days will be excluded from the free float calculation;
- requirements that (i) resolutions relating to matters relevant to premium listing be passed by vote of the shareholders of the premium-listed class of shares or, in case of a resolution by independent shareholders, independent shareholders of the premium-listed class of shares and (ii) voting rights relating to a class of equity shares admitted to premium listing must carry an equal number of votes on any shareholder vote and, where there is more than a single class of premium-listed shares, voting rights be shared on a proportionate basis across such classes; and
- a requirement for small related party transactions to be disclosed to the market as soon as possible after the transaction takes place instead of in the company's next annual report.

The changes applicable to all standard-listed companies, such as companies listing global depositary receipts or bonds, include:

- a requirement that the company take reasonable steps to establish and maintain adequate procedures, systems and controls to enable it to comply with its obligations as a standard-listed company;
- a requirement to deal with the FCA in an open and cooperative manner; and
- new guidance on when the FCA will consider reducing the 25% free float eligibility requirement and also when the prevailing free float would be such that the FCA would revoke such a concession.

More detail on these were set out in our alert dated November 19, 2013.

III. KEY DEVELOPMENTS IN THE FCA'S APPROACH

The FCA made very few significant changes to the approach it had outlined as proposals. The noteworthy developments in the FCA's approach are summarized below.

The definition of a controlling shareholder

The new rules have been simplified somewhat from the original proposals so that premium listed companies need to assess whether any person reaches the 30% control threshold taking into account the holdings of that person together with those of its concert parties. Unlike the original proposals, holdings of associates of those persons do not need to be taken into account if they are not also concert parties. This change responds to concerns expressed during the consultation process that including associates within the definition of a controlling shareholder created a package that was too broad and complex to be applied with certainty.[1]

Acting in concert

The FCA has rejected calls for guidance on the meaning of "acting in concert". One alternative was for the FCA to incorporate the Takeover Panel's guidance on its meaning. The FCA has concluded that it would not be appropriate to restrict the discretion of the FCA or the Takeover Panel. However, the FCA has helpfully stated that it is unlikely in practice that the FCA's conclusions on who is acting in concert would be substantially different to any that the Takeover Panel might reach.

* * *

[1] The breadth and complexity has not been eliminated in its entirety, however, since key controls on controlling shareholders, once triggered, will nevertheless apply to their associates. Accordingly, associates will still have to be identified if a controlling shareholder has been determined to exist.

Please feel free to call any of your regular contacts at the Firm or any of our partners and counsel listed under "Capital Markets" or "Corporate Governance" in the Practices section of our website (http://www.clearygottlieb.com) if you have any questions.

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